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AVAGO TECHNOLOGIES GENERAL IP (SINGAPORE) PTE. LTD.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

AVAGO TECHNOLOGIES GENERAL IP
(SINGAPORE) PTE. LTD.,

Plaintiff,

v.

ASUSTEK COMPUTER INC. and ASUS
COMPUTER INTERNATIONAL,

Defendants.

CASE NO. 3:15-CV-04525-EMC

**PLAINTIFF'S NOTICE OF UNOPPOSED
MOTION AND UNOPPOSED MOTION
FOR THE ISSUANCE OF A LETTER OF
REQUEST FOR THE TAKING OF
EVIDENCE ABROAD PURSUANT TO
THE HAGUE CONVENTION**

Date: August 4, 2016
Time: 1:30 p.m.
Judge: Hon. Edward M. Chen

NOTICE OF MOTION

TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

Please take notice that on August 4, 2016, at 1:30 p.m., or as soon thereafter as counsel may be heard before the Honorable Edward M. Chen, in the United States District Court for the Northern District of California, located at 450 Golden Gate Ave, San Francisco, California, Plaintiff Avago Technologies General IP (Singapore) Pte. Ltd., (“Avago”) will move and hereby does move this Court for the issuance of a Letter of Request for the Taking of Evidence Abroad pursuant to the Hague Convention from foreign third-party ARM Ltd. (“ARM”). This motion is based upon this Notice of Motion, the Statement of Relief, the accompanying Memorandum of Points and Authorities, the Declaration of Matthew C. Holohan (“Holohan Decl.”) submitted in support of this Motion, all matters with respect to which this Court may take judicial notice, all pleadings, papers and records on file in this action, and upon such other documentary and oral evidence as may be presented at the hearing. Counsel for Defendants ASUSTeK Computer Inc. and ASUS Computer International (collectively, “ASUS”) has indicated that ASUS does not oppose this Motion.

STATEMENT OF RELIEF

Avago respectfully requests that the Court sign and affix its seal to the accompanying Letter of Request, and return the same with an original signature and seal to Avago’s counsel for transmittal to the Central Authority for the United Kingdom for the Hague Evidence Convention.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Avago respectfully moves the Court, pursuant to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the “Hague Evidence Convention”), 23 U.S.T. 2555, 28 U.S.C. § 1781, and Federal Rules of Civil Procedure 26(b)(1) and 28(b), for issuance of a Letter of Request to obtain documents and testimony from foreign British third party ARM Ltd. (“ARM”). ARM possesses documents and knowledge to be used at trial in support of Avago’s allegations of infringement against ASUS. Accordingly, Avago respectfully requests that the Court grant this Motion and issue a Letter of Request on behalf of

1 Avago for transmittal to the Central Authority for the United Kingdom for the Hague Evidence
2 Convention.

3 **II. FACTUAL BACKGROUND**

4 Avago asserts that ASUS infringes U.S. Patent Nos. 5,670,730, 5,870,087, 5,982,830,
5 6,188,835, 6,430,148, 6,744,387, and 6,982,663 (collectively, the “Patents-in-Suit”). (Dkt. No. 20)
6 The technology of the patents-in-suit relates to, among other things: decoding electronic video
7 and/or audio files (*e.g.*, MPEG); storing audio files (*e.g.*, MP3) on an integrated circuit chip;
8 reading data from an optical disc (*e.g.*, DVD or Blu-ray disc); and use of or compatibility with the
9 IEEE 802.11 wireless standard.

10 In support of its infringement claims, Avago diligently is pursuing discovery from ASUS.
11 In order to ensure its search is exhaustive, Avago now seeks discovery regarding particular
12 components of ASUS products that may not be available from ASUS or from public sources.
13 Specifically, ARM makes components used in ASUS products which relate to the technology of
14 the Patents-in-Suit as ARM provides products related to video processing, (*see* Declaration of
15 Matthew C. Holohan (“Holohan Decl.”), Ex. 1).

16 The Letter of Request that is the subject of this Motion is attached hereto as **Appendix A**
17 solicits assistance from the Central Authority for the United Kingdom for the Hague Evidence
18 Convention to obtain documents and testimony relevant to Avago’s claims of infringement from
19 ARM, which is headquartered in the United Kingdom. Holohan Decl., Ex. 2. Avago is unable to
20 secure the requested discovery from ARM through domestic discovery, such as a subpoena
21 pursuant to Fed. R. Civ. Proc. 45.¹

22 Further, because the information Avago seeks via a Letter of Request relates to internal and
23 proprietary functionality of components purchased by ASUS, ASUS may not possess complete
24 information concerning the functionality of these devices. Thus, Avago may not be able to obtain
25 complete discovery from ASUS.

26
27
28 ¹ Avago has served a subpoena on ARM’s U.S. entity, ARM Inc., but has yet to receive a
response. Holohan Decl. ¶ 4.

1 **III. ARGUMENT**

2 Both the United States and the United Kingdom are signatories to and bound by the Hague
 3 Evidence Convention, which authorizes the issuance of a Letter of Request from a judicial tribunal
 4 in the United States to the designated authority in the United Kingdom. *See* Hague Evidence
 5 Convention, Ch. I, Art. 1, reproduced at 28 U.S.C. § 1781 (permitting “the transmittal of a letter
 6 rogatory or request directly from a tribunal in the United States to the foreign or international
 7 tribunal, officer, or agency to whom it is addressed and its return in the same manner”); *see also*
 8 *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522,
 9 533 (1987). Whether to issue a Letter of Request is a matter of discretion for the court. *See*
 10 *Aerospatiale*, 482 U.S. at 533-35.

11 The attached Letter of Request asks that a British court compel ARM to produce the
 12 documents and testimony described in the Letter. A form seeking a Request for Service Abroad of
 13 Judicial or Extrajudicial Documents directed to ARM is attached as Ex. 3 to the Holohan
 14 Declaration, which also requires the Court’s signature. As can be seen from the Letter, *see*
 15 **Appendix A**, Avago’s discovery requests are reasonably calculated to lead to the discovery of
 16 admissible evidence relating to components manufactured by ARM that are incorporated into
 17 infringing ASUS devices. As noted above, ARM has made components used in the allegedly
 18 infringing ASUS products.

19 **IV. CONCLUSION**

20 For the foregoing reasons, Avago respectfully requests that the Court grant this Motion,
 21 sign and affix its seal to the accompanying Letter of Request, and return the same with an original
 22 signature and seal to Avago’s counsel for transmittal to the Central Authority for the United
 23 Kingdom for the Hague Evidence Convention.

1 Dated: June 27, 2016

Respectfully Submitted,

2 KILPATRICK TOWNSEND & STOCKTON LLP

3 By: /s/ Matthew C. Holohan

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